

1 **WO**

2
3
4
5
6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
8

9
10 Charles Henry Todd,

11 Petitioner,

12 vs.

13 Charles L. Ryan, et al.

14 Respondents.
15

No. CV-13-08189-PCT-PGR (JZB)

ORDER

16 Having reviewed *de novo* the Report and Recommendation of Magistrate
17 Judge Boyle notwithstanding that no party has filed any objections to the Report and
18 Recommendation¹, the Court concludes that the Magistrate Judge correctly
19

20 1

21 The Court notes that the Clerk of the Court mailed a copy of the Report
22 and Recommendation to the petitioner, who is out of custody, to the address noted
23 by the petitioner in his last change of address form (Doc. 16). Although there is no
24 indication in the record that this copy of the Report and Recommendation was not
25 received by the petitioner, the Court, in an abundance of caution, entered an order
26 (Doc. 21) that required the Clerk to mail another copy of the Report and
Recommendation to the petitioner at a different address that the petitioner had
placed on two motions for status (Docs. 18 and 19) that he had filed subsequent to
his last notice of change of address. That second copy of the Report and
Recommendation was returned as undeliverable and the Court has no other mailing
addresses for the petitioner.

1 determined that the petitioner's amended petition for a writ of habeas corpus, filed
2 pursuant to 28 U.S.C. § 2254, should be denied (1) because the petitioner
3 procedurally defaulted on Grounds One, Two, Three, Four, Five, Six, Seven (a),
4 Eight and Nine and has not established any cause, including his claims of ineffective
5 assistance of counsel, sufficient to excuse his procedural defaults and he has not
6 argued a fundamental miscarriage of justice, and (2) because the Arizona Court of
7 Appeals' rejection of the petitioner's "right to present a defense" claim underlying
8 Ground Seven (b), which was based on the preclusion of hearsay evidence, was not
9 contrary to or an unreasonable application of clearly established Supreme Court
10 precedent. Therefore,


11 IT IS ORDERED that the Magistrate Judge's Report and Recommendation
12 (Doc. 20) is accepted and adopted by the Court.

13 IT IS FURTHER ORDERED that the petitioner's Amended Petition Under 28
14 U.S.C. § 2254 for a Writ of Habeas Corpus by a Person in State Custody (Doc. 5)
15 is denied and is dismissed with prejudice.

16 IT IS FURTHER ORDERED that a certificate of appealability shall not issue
17 and leave to appeal *in forma pauperis* is denied because the dismissal of the
18 petitioner's Amended Petition is justified by a plain procedural bar and jurists of
19 reason would not find the procedural ruling debatable, and because the petitioner
20 has not made a substantial showing of the denial of a constitutional right.

21 IT IS FURTHER ORDERED that the Clerk of the Court shall enter judgment
22 accordingly.

23 DATED this 28th day of June, 2015.

24
25 
26 Paul G. Rosenblatt
United States District Judge